



Idaho's Citizen Commission for Reapportionment

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Public Meeting
Thursday, July 14, 2011
Capitol Building, Capitol Auditorium
1:30 pm

Chairman Frasure called the meeting to order, present were: **Commissioner Esposito, Commissioner Finman, Commissioner Frasure, Commissioner Andersen, Commissioner Kane, and Commissioner Moses.** Present from the staff were **Mr. Keith Bybee, Ms. Kristin Ford, Mr. Todd Cutler and Cyd Gaudet.** Present from the Attorney General's office were **Ms. Mooney and Mr. Gilmore.** **Chairman Frasure** thanked everyone for their patience as they were just a couple of minutes late. Prior to the agenda he wanted to publicly announce and give due respect to John Hepworth, who passed away. He had served on the prior redistricting commission, and **Chairman Frasure** indicated that Mr. Hepworth was a fine gentleman who served Idaho well. He then moved on to a review of the budget.

Keith Bybee explained that he had prepared a one page report which would simplify what they had talked about, which he then walked the commission through. He indicated that he had categorized some of the expenses so they were more readily available for the commissioners to understand how their budget was working. He stated that he left the commissioner compensation at \$18,000, and as of the prior day they were approximately 25% expended, so they are on pace. He broke out the partisan mapping assistants, and indicated that he was able to move up a little more money, so \$22,000 is available for each team. He had received a couple more invoices from the Republican team which were not included yet. He indicated that the travel portion of the budget is getting a little tight but there is some flexibility between miscellaneous expenses, the commissioner's compensation, and the travel portion of the budget. So overall they are one quarter of the way spent with being more than a third of the way through the time, and if they stay on pace the budget is doing very well.

Commissioner Moses asked if everything was in that was expected so far. **Mr. Bybee** indicated that other than the two invoices received today, and one outstanding invoice from one of the mapping assistants, this reflects everything through the day before. **Chairman Frasure** asked if the additional public hearings counted for most of the additional travel expense. **Mr. Bybee** indicated yes, however there was a lot of flexibility in the budget but that was probably why they are seeing a little more expenditure on the travel side. He also recognized that **Commissioner Finman** was not taking any compensation, and was paying for her own travel, so that also accounts for being a little under budget right now. **Chairman Frasure** then thanked **Commissioner Finman** for her kind contribution to the State's general fund; he then indicated that travel expenses should just be the commissioners getting back and forth to the meetings at this time. **Mr. Bybee** stated that they do have some flexibility with miscellaneous expenses in using some more if the travel budget gets tight. He also explained that this is just a general outline on how the budget was working and that he wanted to advise the commission as to how they are doing in comparison to the original plan so far. **Commissioner Kane** then asked if they needed a motion to approve the budget. **Chairman Frasure** indicated no, that this was just an update. He then asked **Mr. Bybee** to report back, on the budget, in two weeks.

Chairman Frasure then moved on to the review of the minutes. He explained that a lot of the minutes were coming in and that he had just had time the night before to review them. He stated that he felt there were some missing sections of testimony that were not reflected in the minutes and that there were items that needed to be added to the minutes to reflect what the actual public testimony was. Without objection he then asked that the staff be allowed time to correct the minutes to reflect the full testimony. **Commissioner Moses** asked about sections missing and asked if there were witnesses missing. **Chairman Frasure** indicated that the witnesses were there but the

preliminary minutes do not reflect the full testimony, and there are some inaccuracies in part of the proposed minutes and he said he would simply like to give the staff time to correct those. He indicated that until the draft copy was approved it was still a draft and that the purpose of the draft is to allow members of the committee and the chairs to see if there are any changes. He added that he has found mistakes and omissions that he requested be reflected in the minutes.

Commissioner Moses indicated that he did not find errors, and that the minutes seemed voluminous, and he did not see the need for further detail. He indicated that if there are errors that they need to be brought out in a public meeting so everyone could see what was happening at the same time. He noted that the minutes had been done by the non partisan staff doing the best they could so he was not inclined to be critical. However he indicated that if changes need to be made it is customary to make them in an open meeting.

Commissioner Esposito indicated that he had the chance to review the minutes and believed that changes would be necessary to meet the level needed in a court situation, which everyone wants to avoid. He said he was not concerned about them from the commissions view but was concerned about outsiders who would want to sue, to make sure they have minutes that fully and accurately reflect the public testimony. He thought it was a good first pass but some improvement would be helpful, and would go through the details with

Commissioner Moses; however, he did not think it would be a good use of their time. He then said that he would support a motion for the staff to take one more pass, to clean up some things and some terminology that could be used in a court. As an example, he mentioned questions regarding if the commission had actually adjourned or recessed, which could put them in a precarious position in court.

Commissioner Moses noted that he is mindful of possible litigation however maybe not as much as **Commissioner Esposito** as there are two forms of electronic records of their proceedings. He asked that in revising the minutes what would be the source material. **Chairman Frasure** indicated that the source material would be the exact transcripts from the hearings. **Commissioner Moses** noted that unless they are not talking about significant additions and just cleaning up loose phraseology then he would be fine with that. **Commissioner Esposito** indicated for the most part it was clean up, however there were some areas of further additions, he classified it as 97% or so clean up, however there were a couple of areas which, in comparing his notes, he noted that some volume was needed.

Commissioner Moses then noted his concern to proceed without an agreed record of what the public record was, as it is difficult to make the claim that they are proceeding in the knowledge of what they heard without agreeing on what they heard. He indicated that going forward without approval of the minutes was bothersome to him. However, if it was the commission's will and the revisions were limited to technical revisions then he would be okay with that. **Chairman Frasure** indicated that this is a normal process, and that the commission had asked for more extensive minutes, and the purpose of that was if the plan was challenged and a judge asked, the minutes are the official record. He noted that it was doubtful that a judge would listen to a tape or video, and he asked the representative from the Attorney General's Office if a court would read the minutes or listen to tapes or video of the proceedings, and what is the significance of the approval of the minutes. **Michael Gilmore** from the Attorney General's Office indicated that under normal circumstances the procedure would be that transcripts are prepared if the court asks for them. He did not know if the court, in this case, would ask for a transcript as this would be up to a stipulation from the parties. He said he would doubt that the court would listen to tapes.

Commissioner Kane then asked when the commission would have these updated minutes prepared. **Chairman Frasure** then asked **Mr. Bybee** what would be a comfortable date to have these completed. **Mr. Bybee** indicated that Tuesday, of the following week, would be best for getting the minutes in line. **Chairman Frasure** then confirmed Tuesday to have the minutes submitted. **Commissioner Moses** then asked if the changes could be highlighted or otherwise identified. **Chairman Frasure** indicated that he would object to that as they were not asking to revise the historical nature of the hearings. **Commissioner Moses** stated that he didn't understand the objection as it would just be showing the staff's work. **Commissioner Finman** then stated that she had taken the time to review the minutes and that for the most part they were well done; however, there were a couple of instances where a citizen's testimony was summarized. She noted times when a witness had talked for ten minutes, and even though there was a preamble, still she would like to get a verbatim record in the minutes of what the citizen said for when the commission went back to review that in doing maps. She agreed with **Commissioner Esposito** that it is 90% there, there is just tweaking needed to reflect the citizen's comments accurately, which is fundamental and what they are supposed to do. **Commissioner Moses** indicated that he too had some experience with minutes and that they are meant to be summaries, not detailed expositions of what the citizens said. He indicated if this was what was wanted they did not need that in the minutes, just a digest of what happened. **Chairman Frasure** then indicated that the reason for the detail, which they had agreed on previously, is because in all likelihood these minutes will be used in a trial setting. He said that the more detailed and accurate they are, that once they are approved, they become the official record of the meeting, and that is what a court would be basing any test on. He noted that there is no requirement that they allow a staff person to editorialize what they thought the minutes were when they have the actual documents and they had already requested copious detail in the minutes. **Commissioner Moses** then commented that if they are going to detail what one witness said then they would have to detail what all the witnesses said and then they would be looking at a book, not minutes. **Chairman Frasure** then indicated if **Commissioner Moses** wanted to make this a motion he would accept that, however he just wanted to have some tweaks and changes in the draft minutes. He stated that he would be happy to start pulling out detail and they could move forward with that. **Commissioner Moses** then indicated that his concern was consistency in method which would make a document stand, and if there are particular witnesses, that particular commissioners wanted to have their entire testimony in the minutes, it seems they would be on shaky ground if they did not do that for all of the witnesses. **Chairman Frasure** agreed and said that they could order

a full transcript of all witnesses' testimony if that's what he had in mind. **Commissioner Moses** indicated that was not what he wanted as that would be a transcript, and not minutes and that they do not need the transcript as they have that electronically.

Chairman Frasure then pointed out that the current minutes may need an additional 10% volume, and that it is selective memory when a witness is quoted and it is inaccurate, and they would like that quote accurate. **Commissioner Moses** then indicated he was sorry if he did not understand, he thought what was being asked for was including new material, which would be the full extent of a witness's remark, not just cleaning up some syntax. **Chairman Frasure** indicated that there were needed additions and some syntax. He noted that he was not talking about a massive amount. He said it would not be going from 15 pages to 85 pages, but maybe 15 pages to needing 17 pages. He then referred to what **Commissioner Finman** had talked about in which several witnesses' testimony was wrong in the Rexburg hearing, as it just says a person testified but not what they testified to. He indicated that this could be a summary or a full length.

Commissioner Moses then indicated that if this can be rendered in such a way that they can see the revisions he is fine with that.

Chairman Frasure indicated that if **Commissioner Moses** would like to request that the staff outline that for him that would be fine, but it would be unusual to have one set of minutes and then another one. He stated that **Commissioner Moses** could take a look at the revisions, and if he had any objections to the revisions, they could revise those objections out. He stated that all they want is a very accurate rendering so that a staff person is not editorializing on the minutes. **Commissioner Moses** indicated that he was asking for the changes to be noted so that he did not have to go through all of the minutes again to find 10% of changes. **Chairman Frasure** indicated that he if would like to request that, the staff could outline the changes for him.

Chairman Frasure then went back to the original request that the staff have until Tuesday to update the minutes. As there were no further objections, he so ordered that the review of the minutes would be put off until Tuesday. He indicated that this had been a good worthy discussion and that at the end of the day they would have a good product. He also indicated that the public testimony, and with everyone having a chance to look at the current minutes, that he didn't think they would have any problem proceeding based on that.

Chairman Frasure then moved on to the next agenda item which was a review of submitted congressional plans by the public. He asked that the staff pull up the submitted plans for the commission to take a peek at. He indicated that this would take a little time but he believed it to be important that the commission give due consideration to the plans submitted by the public. **Todd Cutler** then indicated that there had been 29 Congressional plans submitted to date. **Chairman Frasure** then asked that they look at each one, and asked that the commissioners ask **Mr. Cutler** to slow down if there were any plans that they wanted to focus on. **Mr. Cutler** asked if they would like to see them in Maptitude, or on the website, to which **Chairman Frasure** asked that he put up the maps on the screens and tell the commission about any deviations and county splits. **Mr. Cutler** then started with plan C#1, submitted by Branden Durst, which had a .1% deviation, at plus or minus 788. **Commissioner Moses** asked if this plan does not divide counties. **Mr. Cutler** then read Mr. Durst's comments: that this is a congressional district map; all counties are left whole; deviation is only 0.1% (nearly perfect); all counties within each congressional district are accessible by state highway and or federal highway interstate.

Mr. Cutler then showed C#2, and read the comments, that the Congressional Districts in this plan have a deviation of 0.1%. Congressional District 1 is mostly a rural agricultural based district while District 2 is mostly an urban based district. This map was submitted by Steven Walker and had a deviation of .14% with plus or minus 1,100 people. **Chairman Frasure** noted that this appears to be a whole county plan. **Mr. Bybee** indicated there did not appear to be any county line splits.

The Commission next reviewed C#3, with a deviation of .6%, with plus or minus 4,667 people, the description is a northern and southern split, with Ada County in District 1 and Canyon County in District 2, with no county splits. **Chairman Frasure** asked if there was any note regarding connecting roads in Lemhi County to the first district. **Mr. Cutler** indicated that was not noted.

The Commission then moved on to C#4, with a deviation of .08% with plus or minus 642 people. District 1 is positive and District 2 is negative. The comments were that this plan puts south eastern and northern Idaho in District 1, and south western and Magic Valley in District 2, with no county splits. **Chairman Frasure** then asked the staff to prepare a short summary of these maps regarding the deviation totals, county splits, and road connections, prepared for the following day. **Commissioner Andersen** asked if there had been any public comment on these maps. **Mr. Bybee** noted that there was not currently a forum for anyone to actually comment on the maps, he indicated that could be something they could explore for people to weigh in on the maps; however the technology is limited now as the picture is static, and doesn't allow zooming in. He indicated that they are doing some tweaking to the website. **Chairman Frasure** then asked if they could invite public comment regarding the maps on the website. **Mr. Bybee** answered that the public could send emails to the web address, but there is not a forum where people can see other people's comments, and suggested that having a link for the public to send their discussions of the map would be something that was up for discussion. **Chairman Frasure** indicated that he would invite public comment on the maps. **Commissioner Andersen** indicated that he was curious if anyone had reviewed the maps and made any observations. Specifically someone that was thinking about campaigning from Canada to Wyoming, how these maps would affect that and whether that would be a detriment to them to post online. He suggested that if they could obtain feedback via email that would be helpful. **Commissioner Moses** then asked what the time frame would be in accomplishing this. **Mr. Bybee** advised that they are trying to figure out a solution to the static nature of the plans online, testing to see if they could work the files with Google Earth, and at this point they did not have a good time frame for them. **Commissioner Moses** asked if this meant that **Commissioner Andersen** was running, of which **Commissioner Andersen** indicated that was a qualified no.

Chairman Frasure then moved on to C#5. **Mr. Cutler** indicated that C#5 had a deviation of .04% with a plus or minus 278 people. **Chairman Frasure** indicated that he did not see any county splits on this one and asked if this was the best deviation they had seen so far. **Mr. Cutler** indicated that it was. **Chairman Frasure** then asked the staff to prepare a report of these maps by descending order of deviation. He commented that this might be a fun one for a congressman from northern Idaho and eastern Idaho, but it certainly meets the criteria.

The Commission then examined C#6 with a deviation of .15% with a plus or minus 1146 people.

Chairman Frasure then complimented the public for following their requests, and hoped that this level of detail continued when it came to the legislative plans. He then asked for C#7. When C#7 was brought up, **Commissioner Andersen** asked if this would qualify as gerrymandering as he was wondering what that would look like. **Chairman Frasure** indicated that he thought he could make a salamander out of that. **Mr. Cutler** added that there were no county splits with a deviation of .1%.

The Commission then moved on to C#8, with no county splits, and a 1.2% deviation, with plus or minus 9423 people.

The Commission then went to C#9, with a .42% deviation, plus or minus 3,269 people.

Next was C#10 with a deviation of 30 people. **Chairman Frasure** indicated that it split Ada County with a 30 person deviation. **Commissioner Moses** indicated that it appeared to be a split of Ada County with Canyon County intact. **Mr. Bybee** added that it splits Elmore County as well. **Chairman Frasure** indicated that if they needed a closer view he was sure that the staff could print that out, and asked that the commissioners feel free to ask for any information on these maps, and commented that this map appeared to keep precinct lines together.

Mr. Cutler then brought up C#11 with a .25% deviation with plus or minus 1900 people. He described it as preserving county boundaries while dividing the congressional districts in a north/ south fashion and keeping counties intact while trying to keep all of Ada County in a single district.

C#12 was then brought up. **Chairman Frasure** noted a 31,000 person deviation. He also noted that if the commissioners saw something they liked, they could certainly use that to expand upon and felt the public would be complimented by that.

The Commission then reviewed C#13 with a .09 deviation, plus or minus 669 people. **Chairman Frasure** indicated that this map would be interesting for our Congressman from eastern Idaho. **Commission Andersen** jokingly asked if he was putting this forth for consideration. **Chairman Frasure** indicated that he was afraid to as he would have to go live with Congressman Simpson, and did point out that they are not to consider incumbents in this process. **Chairman Frasure** then indicated that these are all legitimate plans and he appreciates them all.

The next plan reviewed was C#14 with a deviation of .1%, plus or minus 788 people with no county splits, and reminded staff that he would be requesting a list of these maps in order of population deviation.

Next was C#15 which obviously splits Ada County. **Mr. Cutler** indicated this map had a 0% deviation. **Chairman Frasure** asked if they should yell out bingo at the 0%. **Mr. Cutler** advised that Alex De La Torre submitted this map and the comment was that the attempt was to keep the status quo as much as possible. **Commissioner Moses** pointed out that this is the first overtly partisan plan, at which time **Chairman Frasure** indicated that the comments say that this is an incumbent protection plan. He pointed out that this map does split precincts.

Mr. Cutler then showed C#16, which was plus or minus 99 people, with a .01% deviation with county splits. **Chairman Frasure** said he didn't see any obvious splits of precincts. **Mr. Cutler** read the comments which indicated that the map takes the present congressional district map and moves the boundary westward in Ada County and that the districts are mathematically equal to within 99 people. Additionally it says that the map gives special priority to assuring a state highway connecting the district and not dividing communities of interest where others submitted so far have ignored those requirements completely. **Chairman Frasure** indicated there was no mention of splitting precincts.

C#17 was next. **Commissioner Moses** indicated that he noted people drawing maps and indicating that they were preserving communities of interest, and then they cut through Ada County neighborhoods. **Mr. Cutler** stated that this deviation was .08% with plus or minus 642 people.

C#18 was brought up and **Mr. Cutler** advised that this map has a .1% deviation with plus or minus 788 people.

Next shown was C#19, which was plus or minus 278 people, with a deviation of 0.4%. **Mr. Cutler** read the comments which stated that airplane travel is generally required anyway to commute between the 3 major segments of Idaho – the north, the southwest, and the southeast. This plan requires only the 2nd Congressional Representative to travel by plane to the north part of our state, and that the numbers are basically “awesomely matched.” **Chairman Frasure** then indicated this seemed similar to another plan and asked **Mr. Cutler** to read the comments from C#5. Those comments stated that the congressional district would balance out the population and give southwest and south central Idaho one representative. The remaining representative would represent north Idaho and east Idaho.

Next was C#20 which **Chairman Frasure** indicated looked eerily familiar. **Mr. Cutler** advised that this plan had the same deviation as two other plans at 788 people. He then read the comments which stated that the goal of this plan is to keep all 44 counties together while keeping urban Ada County and Pocatello in one district that accurately represents southern Idaho, while the other district accurately represents northern Idaho and the most rural parts of the state. Population deviates by less than one percent according to newest census data and the two districts should grow evenly over the next ten years based on the past few censuses. District one has Coeur d’Alene, Nampa, Caldwell and Idaho Falls. District two has Ada County, Twin Falls and Pocatello.

C#21 was next. **Mr. Cutler** advised that this map had a .04% deviation with a plus or minus of 278 people. **Chairman Frasure** asked **Mr. Cutler** to focus in on Boise as this map appeared to split Ada County and did not appear to split any precincts.

C#22 was next up and **Mr. Cutler** indicated that this one looked familiar. He indicated that this map was submitted by Patrick Jue and indicated that the comments state that this plan eliminates gerrymandering of Ada County and completely follows county borders. Northern Idaho is now part of District 2 with .04% deviation. **Chairman Frasure** indicated that this map is probably the closest full county map so far.

Mr. Cutler then brought up C#23 with a plus or minus of 376 people, and a deviation of .05%. He indicated that the plan was submitted by Tim Lamb who had indicated that his goal was to create a plan with the smallest deviation possible, while keeping communities of interest intact as well as keeping counties together.

C#24 was then brought up and **Chairman Frasure** indicated that this one looked like a duplicate with all of Ada County headed north. **Mr. Cutler** then indicated that this map was submitted by Don Kershner who indicated that in his map Ada gets to be a whole county. **Commissioner Kane** asked for the deviation on this map and was advised it was 3,269 people.

Chairman Frasure then asked for C#25, and commented that there were now three of these plans which were alike. **Mr. Cutler** indicated that this plan was submitted by Nicholas Webster who indicated that it keeps counties intact and keeps the status quo as much as possible. It essentially swaps the part of Ada County in District 2 for Owyhee and Canyon.

#C26 was next which **Mr. Cutler** advised had a .07% deviation, and was plus or minus 572 people. **Commissioner Moses** stated that from this map it would be hard to answer where the line was. **Chairman Frasure** indicated that which side of Highway 55 you lived on would be his answer as you have Highway 55/20 and the Interstate which could be easily figured out. Commissioner Moses pointed out some additional zigs and zags.

Next was C#27 which **Chairman Frasure** indicated was the fourth map that was the same, and asked if this person had submitted one of the previous plans. **Mr. Cutler** indicated that he had submitted a previous plan. **Commissioner Kane** asked if there had been any changes. In looking further it was determined that C#27 and C#24 were the exact same plan. **Chairman Frasure** then indicated that 3 individuals did the exact same plan 4 times.

Mr. Cutler then brought up C#28, which was plus or minus 669 people at .09%. This plan was submitted by Steven Cory who stated that this is a whole county plan which keeps the Treasure Valley together and has a small difference in population. This is the I-84 plan. The second district has two primary media centers, Idaho Falls/Pocatello, and Coeur d’Alene/Lewiston.

Chairman Frasure then asked for C#29. **Mr. Cutler** indicated that this map was plus or minus 481 people, which is a .06% deviation.

Chairman Frasure then called a recess at 2:55 pm until 3:10pm.

Chairman Frasure called the commission back to order at 3:20pm. At this time **Commissioner Andersen** requested that **Commissioner Kane** present some information which had been received. **Commissioner Kane** explained that this was the information in the email from

Kristin Ford which indicated that the legal standard for congressional districts have to be as equal in population as practicable. She asked **Ms. Ford** to go over this as from what she was reading it indicated that the legal standard to challenge a plan was low as all you would have to show was that there was another plan that is more equal. **Ms. Ford** indicated that this appeared to be correct and that probably the only reason that Idaho's Congressional plan during the last redistricting did not fail was because no one sued over it. She stated that ten years ago we had the highest deviation in the country at .6%, and suggested that this time we should shoot for closer to 0. **Commissioner Andersen** then asked if the commission has a plan that was .4%, and reviewed some at 0%, would they be in a difficult position if they did not adopt a 0% plan. **Ms. Ford** indicated that the answer was probably yes and that the commission needs to try to get to as close as possible to a plan with a 0% deviation absent some great justification, and she didn't know whether not splitting county lines would be sufficient or not. **Chairman Frasure** then asked to defer input from the Attorney General's office until **Ms. Mooney** was ready to address that issue.

Commissioner Moses then asked what extenuating factors the court has accepted for not reaching a 0% deviation. **Ms. Ford** indicated that she would have to research the case law on that matter. **Commissioner Moses** indicated that he asked this because there will be a point where 0% and a vivid boundary don't go together and he wondered how the courts would view this. **Chairman Frasure** then asked if **Mr. Gilmore** from the Attorney General's office had a comment. **Mr. Gilmore** indicated that he had not prepared to answer this; however, in reviewing a summary from Ms. Ford, he found that the lower court cases are not consistent on how close to 0% you need to be. **Chairman Frasure** then asked **Mr. Gilmore** to research that information for the next day. **Commissioner Andersen** then asked about the statutory requirement for state roads connecting a county. **Mr. Gilmore** stated that there are 2 provisions that require 5 votes, one is a precinct split and the second is the state roads connecting a district. He then indicated that the constitution states that the final plan requires 4 votes. He stated that as the Idaho Supreme Court has not ruled on this issue, it is a guess as to what they would do. He did a case law search looking for any cases where a statutory supermajority, that is more than a constitutional majority, is binding. He stated he did find a 2009 California case regarding county commissioners. In California, the constitution states that county commissioners can operate by majority vote; however, there was a statute providing for a supermajority and unanimous vote for certain decisions. The California Supreme Court struck this down and said that you can't create by statute a supermajority that is more than the constitution provided for. However, he stated that there may be some hair-splitting here as the statute doesn't speak about 5 votes, or a final plan, it speaks about 5 votes to split a precinct, or 5 votes to connect a district that has no state roadway. So he indicated that it is possible that one could say on intermediate votes you may need 5 votes, but if someone submits a final plan that splits a precinct or doesn't connect with a state road, the constitution states you only need 4 votes to accept that plan. However he stated that it is his educated guess, that the most likely decision of an Idaho Supreme Court would be that if there is a motion for a plan that does one of these things then it only needs 4 votes.

Chairman Frasure indicated that he appreciates the analysis and unless they want to go down that route, as the prior commission decided they wanted to challenge a lot of things, they have their constitutional and statutory requirements and if they want to guess, they could attempt that and come back next March and see what the Supreme Court says. **Mr. Gilmore** also noted that it may never arise if the only motion to be considered was a final plan, as the four votes would be inevitable, **Chairman Frasure** then said if they decided to ignore the statutes by saying they were unconstitutional he supposed that they could venture out on that one too. **Commissioner Kane** reinforced that their goal is avoiding litigation and that is why they asked the attorney general's office to be so very involved so that the court didn't have to appoint a special master or legal costs were incurred. **Chairman Frasure** then asked if **Mr. Gilmore** had any knowledge of what the other states have done, and if they are going 0%. **Mr. Gilmore** answered that he doesn't remember any cases involving deviations from 100 to 500. **Chairman Frasure** then indicated that the best a submitted plan has done, without splitting counties, was 278. **Mr. Gilmore** then indicated that there is some case law dealing with legitimate state concerns which he will research.

Chairman Frasure then requested that the staff look and see what other states are doing, including what states have finished their reapportionment and what are their deviations. **Commissioner Andersen** asked that this include how many had been challenged. **Chairman Frasure** then indicated that they have completed the review of congressional plans and complimented the commission for looking at every single public submitted plan, and indicated that there was some good information in these plans and that obviously that 0% decision will be a big item for the commission.

Commissioner Andersen then indicated that he was going to have some plans to submit; however, with the information on the 0% deviation he will have to redraw those plans. **Chairman Frasure** then discussed that the closest deviation, with whole counties, was 278, and asked for the widest deviation. **Mr. Bybee** indicated that in those 3 plans, which were keeping counties whole, there was a .04% deviation with a plus or minus 278, and that the widest deviation plan, keeping counties whole was C#12 which had a deviation of 4.02% or 31,490 people. **Commissioner Esposito** indicated that there were several plans with a 3269 deviation, and noted that in looking at the county whole plans he found it intriguing to say let's keep the counties whole. The dilemma then that you run into is the equality question of one person=one vote and so he doesn't see how they can quite get there at the 278. He indicated that he is looking forward to what the Attorney General's office comes back with. He further said that he believes that the commission has set ambitious and admirable goals at trying to arrive at the 6-0 vote, and would add as a part of that to finding as fully a defensible plan as possible so that any lawsuits would have a slim-to-none chance of prevailing.

Commissioner Andersen then asked for consideration from the commission, as he has a situation at home, and he would have to leave around 1:00 the following afternoon. **Chairman Frasure** then asked **Mr. Gilmore** if he would have the information for the commission by 9:30 the next morning. He then indicated to **Commissioner Andersen** that from the Republican side they would not feel comfortable with less than six commissioners present. **Commissioner Esposito** supported this statement in that he believes that they need all six commissioners present so that when **Commissioner Andersen** needs to leave, the commission's business will be done for the day.

Commissioner Kane then pointed out to the Attorney General's office the cases outlined in the footnote, in the document from **Ms. Ford**, for their consideration. **Chairman Frasure** then commented that it was amazing that the commission was not sued last time on the congressional districts as they stuck out like a sore thumb, but indicated that in this modern age someone would be likely to sue and that he didn't think any of them wanted to spend all winter in court. **Commissioner Moses** then asked **Mr. Gilmore** to address the degree to which extenuating circumstances are considered, in a suit, such as counties, understandable lines, ease of administration, and intent. Commissioner Moses speculated that the reason we were not sued last time was because there was no clear intent to deprive anyone of their voting rights. So if we get down to a tenth of a percent, how exposed to a successful suit are we, absent any other intent, other than we aren't at zero? **Chairman Frasure** also asked **Mr. Gilmore** to address the difference between a plan that was a 30 deviation vs. one at 0, to which **Mr. Gilmore** indicated that they will try to do a chart giving the maximum deviations which have been upheld to give them some idea of parameters. **Commissioner Esposito** also asked that **Mr. Gilmore** distinguish between the lower court and the Supreme Court cases. **Chairman Frasure** also asked for the most current rulings. **Mr. Gilmore** indicated that they would outline the percentage difference, the absolute difference, the court that decided the case, and the year of the case.

Chairman Frasure then, without objection, adjourned at 3:50 pm.